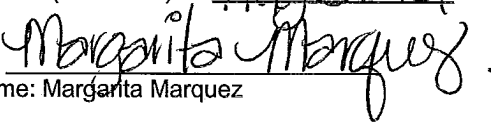


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT	Atty. Docket No. (Opt.) ZIMM1780
Applicant Scott A. Webb et al.	
Application Number 10/633,371	Filing or 371 (c) Date: 08/01/2003
For SPINAL IMPLANT	
Group Art Unit 3733	Examiner David C. Comstock
Confirmation Number: 5117	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir,

<p align="center"><u>CERTIFICATION OF TRANSMISSION UNDER 37 C.F.R. 1.8</u></p> <p>I hereby certify that this correspondence is being transmitted to the Commissioner for Patents, P.O. Box q1450, Alexandria, VA 22312-1450 via the U.S. Patent and Trademark Office Electronic Filing System (EFS-Web) on <u>August 12</u>, 2010.</p> <p>By:  Name: Margarita Marquez</p>

Applicant respectfully requests, pursuant to 37 C.F.R. §§ 1.56, 1.97 and 1.98, that the information listed on the attached PTO/SB/08b form be considered and cited in the above-identified application. A copy of a foreign patent document listed on the attached form is enclosed for the convenience of the Examiner.

☒ This Information Disclosure Statement is being submitted after the period specified in 37 C.F.R. § 1.97(c) and on or before payment of the issue fee and is accompanied by:

- ☒ The statement specified in 37 C.F.R. § 1.97(e); and
- ☒ The fee set forth in 37 C.F.R. § 1.17(p). Applicant hereby authorizes the Commissioner to deduct the amount of \$180 from Deposit Account No. 50-3183 of Sprinkle IP Law Group for the filing fee of this Information Disclosure Statement.

Pursuant to 37 C.F.R. § 1.97(e), Applicant hereby states:

☒ That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement.

The foreign patent document listed on the attached form is a Japanese Patent Office Action issued in Japanese Patent Application No. 2006-521937, which is a national stage application of International Application No. PCT/US2004/023721, filed July 22, 2004, which claims priority from the above-identified U.S. Patent Application. The Japanese Office Action cited the following two documents:

US2003/0100950 A – a U.S. Patent Application Publication which was made of record, but not relied upon, by Examiner Annette R. Reimers of the U.S. Patent and Trademark Office in the first Official Action mailed on June 5, 2006. Since US 2003/0100950 A has been considered by the Examiner, it is not listed in the accompanying form.

JP2003521315 T – a national phase publication of International Application No. PCT/US01/01605 (WO01/054629) which claims priority to U.S. Patent Application No. 09/494,645, filed January 31, 2000 and issued as U.S. Patent No. 6,245,108 (“Biscup”). Biscup was made of record and relied upon in the aforementioned first Official Action mailed on June 5, 2006. The description of paragraph [0056] of JP2003521315, which is referred to in the attached Japanese Office Action, corresponds to that of Col. 9, Lines 16-29, of Biscup. Since Biscup has been considered by the Examiner, JP2003521315 is not listed in the accompanying form.

The Japanese Office Action also included a prior art search record of four documents:

JP2003511202 T – a national phase publication of International Application No. PCT/US2000/041433 (WO01/028469) which claims priority to U.S. Provisional Application No. 60/160,667, filed October 21, 1999, which was converted into U.S. Patent Application No. 09/694,521 on October 23, 2000, and issued as U.S. Patent No. 6,830,570 (“Frey”). Frey was made of record, but not relied upon, by Examiner David C. Comstock of the U.S. Patent and Trademark Office in the second Official Action mailed on December 9, 2008. Since Frey has been considered by the Examiner, JP2003511202 is not listed in the accompanying form.

JP2000512162 T – a national phase publication of International Application No. PCT/CH95/00245 from which International Application No. PCT/CH96/00346 (WO97/15248) and corresponding U.S. national phase application No. 09/011,011 (“Cottle”) claim priority. Cottle was issued as U.S. Patent No. 5,888,227, which was made of record, but not relied upon, by Examiner Annette R. Reimers of the U.S. Patent and Trademark Office in the first Official Action mailed on June 5, 2006. Since Cottle has been considered by the Examiner, JP2000512162 is not listed in the accompanying form.

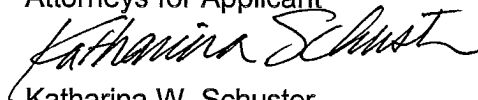
WO02/47587 A – an international publication of International Application No. PCT/US2001/045734, which claims priority from U.S. Patent Application No. 09/696,146, filed October 25, 2000 and issued as U.S. Patent No. 6,758,863 (“Estes”). Estes discloses a vertically expanding intervertebral spacer of a shaped memory polymer material which can be formed into a cylindrical, C-shaped, or kidney shaped body and which is inserted into a disc space, using known surgical techniques, in a deformed state and heated above its deformation temperature to achieve an expanded configuration *in-situ*. Estes was not used in the Japanese Office Action in rejecting the claims in Japanese Patent Application No. 2006-521937. Although Estes was listed in the prior art search record in Japanese Patent Application No. 2006-521937, the Japanese Office Action stated that the prior art search record does not constitute any official action. Estes was not identified by the Japanese Examiner as particularly relevant. Applicant has reviewed Estes and believes that Estes is not material to patentability of the claims in the present application. Accordingly, Estes is not listed in the accompanying form.

WO02/17823 A - an international publication of International Application No. PCT/KR2001/001446 which was made of record via Information Disclosure Statement submitted on September 7, 2007 in the present application. Since WO02/17823 has been considered by the Examiner, it is not listed in the accompanying form.

Applicant respectfully submits that the claims of Applicant’s above-referenced patent application are patentably distinguishable from the listed information. Furthermore, pursuant to 37 C.F.R. §§ 1.97(g) and (h), no representation is made that a search has been made or that the listed information is material to patentability of the present application.

Respectfully submitted,

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Dated: Aug. 12, 2010

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